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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

ARDAVAN ASLIE, M.D.,

Plaintiff,

v.

AMERICAN BOARD OF
ORTHOPAEDIC SURGERY; and
DOES 1 THROUGH 10,

Defendants.

Case No. 2:24-cv-01181-AC

**DEFENDANT AMERICAN BOARD
OF ORTHOPAEDIC SURGERY'S
NOTICE OF MOTION AND
MOTION TO DISMISS FOR LACK
OF PERSONAL JURISDICTION
(FED. R. CIV. P. 12(b)(2)), OR IN
THE ALTERNATIVE TO DISMISS
FOR IMPROPER VENUE (FED. R.
CIV. P. 12(b)(3)), OR IN THE
ALTERNATIVE, TO TRANSFER
VENUE (28 U.S.C. §§ 1391(b)(2) and
1406(a)); MEMORANDUM OF
POINTS AND AUTHORITIES;
DECLARATION OF DAVID F.
MARTIN, M.D.; DECLARATION
OF COREY E. KRUEGER;
EXHIBITS**

Hearing Date: June 5, 2024

Hearing Time: 10:00 a.m.

Courtroom: 26

Judicial Officer: Hon. Allison Claire

TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on June 5, 2024, at 10:00 a.m., or as soon
thereafter as the matter may be heard in the above-entitled Court, located at 501 I
Street, Sacramento, California 95814, defendant AMERICAN BOARD OF

1 ORTHOPAEDIC SURGERY (“ABOS”) will and hereby does move this Court for an
2 order dismissing this action for lack of personal jurisdiction (Fed. R. Civ. P. 12(b)(2)),
3 or in the alternative, dismissing this action for improper venue (Fed. R. Civ. P.
4 12(b)(3)), or in the alternative, transferring venue to the United States District Court
5 for the Northern District of Illinois (28 U.S.C. §§ 1391(b)(2) and 1406(a)).

6 Prior to filing this motion, counsel for defendant met and conferred with
7 plaintiff’s counsel. On April 16, 2024, counsel for defendant sent e-mail
8 correspondence to plaintiff’s counsel regarding the lack of personal jurisdiction and
9 improper venue, asking if counsel would stipulate to a change in venue in light of
10 those issues. *See* Declaration of Corey E. Krueger (“Krueger Decl.”), ¶ 2; Exhibit
11 “A”. On April 19, 2024, counsel for plaintiff responded via e-mail, stating without
12 discussion that he would not stipulate as requested. *See* Krueger Decl., ¶ 3; Exhibit
13 “B”. Accordingly, the parties were unable to reach a resolution of the issues raised
14 by the instant motion.

15 The instant motion is brought on the following grounds:

16 1. The Court lacks personal jurisdiction over defendant ABOS. Fed. R.
17 Civ. P. 12(b)(2). ABOS is not subject to general jurisdiction in California, because it
18 is not incorporated in California, and its principal place of business is outside of
19 California. Furthermore, this Court lacks specific jurisdiction over ABOS, because
20 defendant has not purposefully directed its activities to the State of California. All
21 alleged acts or omissions giving rise to this matter occurred outside the State of
22 California. Thus, this action does not arise out of or relate to any contacts between
23 defendant ABOS and the State of California. Finally, it would be unreasonable and
24 offend the traditional notions of fair play and substantial justice to exercise personal
25 jurisdiction over ABOS in this judicial district because the parties and witnesses
26 which are the subject of the dispute are predominantly located outside California,
27 among other reasons.

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1 2. If the Court does not dismiss the action due to lack of personal
2 jurisdiction, defendant moves the Court for an order dismissing the action due to
3 improper venue. Fed. R. Civ. P. 12(b)(3). Venue is not proper in the Eastern District
4 of California, because defendant ABOS does not “reside” in this District, nor in any
5 other District within California. 28 U.S.C. § 1391(b)(1). Furthermore, none of the
6 events or omissions giving rise to the instant action occurred in this District. 28
7 U.S.C. § 1391(b)(2). Finally, as discussed above, ABOS is not subject to personal
8 jurisdiction in this District, and thus venue cannot be proper in this District. 28 U.S.C.
9 § 1391(b)(3).

10 3. If the Court does not dismiss the action due to either lack of personal
11 jurisdiction or improper venue, defendant moves the Court for an order transferring
12 venue to the Northern District of Illinois (Eastern Division – Chicago, Illinois). 28
13 U.S.C. §§ 1391(b)(2) and 1406(a). Venue would be proper in the Northern District
14 of Illinois, because a substantial part of the events or omissions giving rise to the
15 instant action occurred in that District, in Chicago, Illinois. 28 U.S.C. § 1391(b)(2).

16 This motion is based upon (1) this Notice; (2) the attached Memorandum of
17 Points and Authorities; (3) the attached Declaration of David F. Martin, M.D.; (4) the
18 attached Declaration of Corey E. Krueger and its exhibits; (5) plaintiff’s California
19 State Court Complaint filed in the Superior Court of California, County of
20 Sacramento, case number 24CV003327, on file with this court as Exhibit “A” to
21 defendant’s Notice of Removal (Document 1); (6) on the papers and pleadings on file
22 herein; and (7) on such oral argument as may be presented at the hearing of this
23 motion.

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1 To the extent deemed necessary by the Court, defendant AMERICAN BOARD
2 OF ORTHOPAEDIC SURGERY requests oral argument in connection with the
3 instant motion.

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5 DATED: April 29, 2024

TRESSLER LLP

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9 Corey E. Krueger
10 Attorneys for Defendant,
11 AMERICAN BOARD OF
12 ORTHOPAEDIC SURGERY
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND SUMMARY OF ARGUMENT

Plaintiff ARDAVAN ASLIE, M.D., a physician specializing in orthopaedic surgery who resides in Sacramento County, California, brought this action against defendant AMERICAN BOARD OF ORTHOPAEDIC SURGERY (“ABOS”), a corporate entity which is organized under the laws of the State of Delaware and which maintains its principal place of business in the State of North Carolina. *See* Declaration of David F. Martin, M.D. (“Martin Decl.”), ¶¶ 2-3. The California State court Complaint filed by plaintiff alleges two causes of action: (1) Violation of the Common Law Right of Fair Procedure, and (2) Wrongful Denial of Certification. As even plaintiff’s Complaint concedes, the facts and circumstances from which this matter arise occurred principally in Chicago, Illinois. *See* plaintiff’s Complaint, Document 1, Exhibit “A” thereto, ¶ 18; *see also* Martin Decl., ¶ 18.

ABOS is not subject to personal jurisdiction in the State of California. Likewise, none of the facts out of which this action arises occurred in the State of California. Defendant ABOS seeks dismissal of the action for lack of personal jurisdiction (Fed. R. Civ. P. 12(b)(2)), or in the alternative, dismissal of the action for improper venue (Fed. R. Civ. P. 12(b)(3)), or in the alternative, transfer of the action to the United States District Court for the Northern District of Illinois (Eastern Division – Chicago, Illinois), where venue would be proper. 28 U.S.C. §§ 1391(b)(2) and 1406(a).

II. THE COMPLAINT SHOULD BE DISMISSED FOR LACK OF PERSONAL JURISDICTION.

“[T]hose who live or operate primarily outside a State have a due process right not to be subjected to judgment in its courts as a general matter.” J. McIntyre, Ltd. v. Nicastro, 564 U.S. 873, 881 (2011) (plurality opn.). As established by the attached Declaration of David F. Martin, M.D., ABOS is not incorporated in the State of California and has no operations in the State of California. *See* Martin Decl., ¶¶ 2-4.

1 Maintaining an action against defendant ABOS in the State of California would
 2 offend due process. This action should be dismissed for lack of personal jurisdiction.
 3 Pursuant to Fed. R. Civ. P. 12(b)(2), the Court is authorized to dismiss an action for
 4 lack of personal jurisdiction even if the matter is before the Court after removal by
 5 the defendant. Dielsi v. Falk, 916 F. Supp. 985, 994 (C.D. Cal. 1996).

6 Personal jurisdiction in California is governed by California Code of Civil
 7 Procedure § 410.10, which states, “A court of this state may exercise jurisdiction on
 8 any basis not inconsistent with the Constitution of this state or of the United States.”
 9 Under such a long arm statute, jurisdiction is proper only where it does not offend the
 10 Due Process Clause of the Fourteenth Amendment. *See, e.g., International Shoe Co.*
 11 *v. State of Wash.*, 326 U.S. 310, 313-17 (1945). To satisfy due process, the plaintiff
 12 must establish that the defendant is subject to either “general” jurisdiction or
 13 “specific” jurisdiction. Daimler AG v. Bauman, 571 U.S. 117, 121-22 (2014). The
 14 burden of establishing personal jurisdiction falls upon plaintiff. American Tel. & Tel.
 15 Co. v. Compagnie Bruxelles Lambert, 94 F. 3d 586, 588 (9th Cir. 1996).

16 **A. The Court Should Summarily Dismiss, Because The Complaint Fails**
 17 **To Allege Any Sufficient Contacts Between ABOS And California.**

18 To establish that a State has jurisdiction over a defendant, the plaintiff must, at
 19 a minimum, make a *prima facie* showing of jurisdictional facts. *See, e.g., Mavrix*
 20 *Photo, Inc. v. Brand Technologies*, 647 F. 3d 1218, 1223 (9th Cir. 2011). Although
 21 uncontroverted allegations in the Complaint may be taken as true, such allegations
 22 will not be assumed true if they are contradicted by declaration or affidavit. *See Id.*;
 23 Taylor v. Portland Paramount Corp., 383 F. 2d 634, 639 (9th Cir. 1967).

24 Here, the Complaint does not attempt to meaningfully allege contacts between
 25 defendant ABOS and the State of California. The Complaint makes broad legal
 26 contentions regarding assertion of jurisdiction by California State courts, but it makes
 27 no meaningful allegations of contacts between ABOS and California. Indeed, the
 28 Complaint concedes that ABOS’ principal place of business is in the State of North

1 Carolina. *See* plaintiff’s Complaint, Document 1, Exhibit “A” thereto, ¶ 5. Plaintiff’s
 2 sole effort to attempt to establish jurisdiction is to contend that the alleged wrongdoing
 3 “impacts Plaintiff in his place of business.” *See* plaintiff’s Complaint, Document 1,
 4 Exhibit “A” thereto, ¶ 5. However, this is not an allegation of contacts between
 5 *defendant* and the State of California, and it therefore has no bearing on jurisdiction
 6 over ABOS.

7 The Declaration of David F. Martin, M.D. establishes that ABOS is not
 8 organized under the laws of the State of California, and it does not maintain its
 9 principal place of business (or *any* operations) in the State of California. *See* Martin
 10 Decl., ¶¶ 2-4. This, combined with the complete absence of alleged contacts between
 11 ABOS and the State of California, supports outright dismissal of the instant action for
 12 lack of personal jurisdiction, pursuant to Fed. R. Civ. P. 12(b)(2).

13 **B. California Courts Do Not Have “General Jurisdiction” Over ABOS**
 14 **Because ABOS Is Not “At Home” In California.**

15 This Court does not have “general” jurisdiction over ABOS. A court may assert
 16 general jurisdiction over a corporation to hear any and all claims against it, even those
 17 unrelated to that corporation’s activities within the forum State, when the
 18 corporation’s affiliations with the State are so continuous and systematic as to render
 19 them essentially at home in the forum State. Goodyear Dunlop Tires Operations, S.A.
 20 v. Brown, 564 U.S. 915, 919, 925 (2011). For a corporation, “the paradigm forum for
 21 the exercise of general jurisdiction” is an “equivalent place” to an “individual’s
 22 domicile”. Id. At 924. This location consists of a corporation’s State of incorporation
 23 and State where the principal place of business is located. Id.; Daimler AG, 571 U.S.
 24 at 137-38. Indeed, “*Goodyear* made clear that only a limited set of affiliations with a
 25 forum will render a defendant amenable to all-purpose jurisdiction there.” Id. at 137.

26 Defendant ABOS is not incorporated in California, and it does not maintain its
 27 principal place of business (or *any* place of business) in California. *See* Martin Decl.,
 28 ¶¶ 2-4. Indeed, ABOS is not even registered with the State of California for purposes

1 of doing business within the State. *See* Declaration of Corey E. Krueger (“Krueger
2 Decl.”), ¶ 4.

3 Plaintiff makes no meaningful effort to allege contact between ABOS and the
4 State of California. Furthermore, the Declaration of David F. Martin, M.D. establishes
5 that there are no such contacts. The Due Process clause is violated where a defendant
6 with no California contacts is forced to defend an action in California. General
7 jurisdiction cannot be maintained in California as to ABOS.

8 **C. California Courts Do Not Have “Specific Jurisdiction” Over ABOS.**

9 In contrast to general jurisdiction, which “permits a court to assert jurisdiction
10 over a defendant based on a forum connection unrelated to the underlying suit (e.g.,
11 domicile),” specific jurisdiction “depends on *an affiliation between the forum and the*
12 *underlying controversy.*” *Walden v. Fiore*, 571 U.S. 277, 283, fn. 6 (2014) (*quoting*
13 *Goodyear*, 564 U.S. at 919) (emphasis added). The required affiliation between the
14 forum and the underlying controversy typically involves an “activity or an occurrence
15 that takes place in the forum State and is therefore subject to the State’s regulation.”
16 *Goodyear*, 564 U.S. at 919. “The inquiry whether a forum State may assert specific
17 jurisdiction over a nonresident defendant ‘focuses on the relationship among the
18 defendant, the forum, and the litigation.’” *Walden*, 571 U.S. at 283-284 (*quoting*
19 *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 775 (1984)).

20 The Ninth Circuit applies a three-part test to determine whether the exercise of
21 specific jurisdiction over a nonresident defendant is appropriate:

- 22 “(1) The non-resident defendant must purposefully direct his activities
23 or consummate some transaction with the forum or resident thereof; or
24 perform some act by which he purposefully avails himself of the
25 privilege of conducting activities in the forum, thereby invoking the
26 benefits and protection of its laws;
27 (2) the claim must be one which arises out of or relates to the
28 defendant’s forum-related activities; and
(3) the exercise of jurisdiction must comport with fair play and
substantial justice, i.e. it must be reasonable.”

1 Boschetto v. Hansing, 539 F. 3d 1011, 1016 (9th Cir. 2008).

2 Under this test, it is plaintiff’s burden to meet the first two prongs, and if he
 3 fails to do so, then “the jurisdictional inquiry ends and *the case must be dismissed*.”
 4 Id. (emphasis added). “[A] defendant’s relationship with a plaintiff or third party,
 5 standing alone, is an insufficient basis for jurisdiction.” Walden, 571 U.S. at 286
 6 (citing Rush v. Savchuk, 444 U.S. 320, 332 (1980)). “Due process requires that a
 7 defendant be haled into court in a forum State *based on his own affiliation with the*
 8 *State, not based on the random, fortuitous, or attenuated contacts he makes by*
 9 *interacting with other persons affiliated with the State*.” Walden, 571 U.S. at 286
 10 (internal quotations omitted, emphasis added) (quoting Burger King Corp. v.
 11 Rudzewicz, 471 U.S. 462, 475 (1985)).

12 1. *Plaintiff Fails On The First Two Prongs*

13 Here, plaintiff completely fails to allege purposeful direction or purposeful
 14 availment. Plaintiff might contend that ABOS’ granting of board certification to
 15 physicians who live and work in California amounts to purposeful direction, and that
 16 because this matter arises out of a dispute over re-certification, the first two prongs
 17 are met. Such a theory would result in jurisdiction nationwide, and it would be
 18 incorrect. A contact between a defendant and a State has “no jurisdictional
 19 significance” if it would result in jurisdiction “in all 50 States...”. Rush, 444 U.S. at
 20 329-30. ABOS accepts applications for board certification from candidates
 21 nationwide, and does not purposefully direct its efforts toward any particular State.
 22 See Martin Decl., ¶¶ 6-7. That candidates from California – like plaintiff – reach out
 23 to ABOS and seek board certification from ABOS does not amount to purposeful
 24 availment *by ABOS*. Plaintiff does not (and cannot) allege purposeful direction or
 25 purposeful availment, and he certainly cannot allege a relationship between ABOS
 26 and California that is *created by ABOS*, which is critical because the relationship
 27 between the defendant and the forum State “must arise out of contacts that the
 28 defendant *himself* creates with the forum State.” Walden, 571 U.S. at 284 (internal

1 quotation omitted, emphasis in original).

2 2. *Assertion Of Jurisdiction In California Would Be Unreasonable.*

3 Even if the first two prongs are satisfied, jurisdiction remains improper if it is
4 unreasonable. Burger King Corp., 471 U.S. at 477-78. The Ninth Circuit considers
5 seven factors in determining whether the exercise of jurisdiction would be
6 unreasonable in a particular case. These factors include: (1) the extent of the
7 defendant's purposeful interjection into the forum State's affairs; (2) the burden on
8 the defendant of defending in the forum; (3) the extent of conflict with the sovereignty
9 of the defendant's home state; (4) the forum State's interest in adjudicating the
10 dispute; (5) the most efficient judicial resolution of the controversy; (6) the
11 importance of the forum to plaintiff's interests in convenient and effective relief; and
12 (7) the existence of an alternative forum.

13 As discussed above and in the attached Declaration of David F. Martin, M.D.,
14 defendant ABOS has done little or nothing to interject itself into the affairs of the
15 State of California. *See* Martin Decl., ¶¶ 6-7. The burden of defending in California
16 would be tremendous to ABOS, as it has *zero* company resources or activities in
17 California (or indeed anywhere close to California) and would be forced to defend
18 from afar. To the extent that plaintiff contends that the ABOS re-certification process
19 is somehow unfair, other States have a far greater interest in adjudicating such a
20 dispute – most significantly the State of Illinois, since most ABOS oral examinations
21 (about which plaintiff complains) are held in Chicago, Illinois. California, on the
22 other hand, has comparatively little interest in adjudicating this dispute, where the
23 defendant has no contacts with the State and none of the facts giving rise to the action
24 occurred in the State. This action will be most efficiently disposed of in a venue that
25 is actually relevant to the facts of this matter. Maintaining venue in California is of
26 little significance to plaintiff's interests, since his claims can be (and should have
27 been) brought in another venue where they can be adjudicated. Finally, there is no
28 dispute that another forum is available – the Northern District of Illinois, where the

1 oral examination in question took place.

2 Plaintiff will presumably argue that board certification is, apparently, a
3 requirement for hospital privileges in many locations, and that this somehow (1)
4 shows purposeful availment and (2) shows a level of importance weighing in favor of
5 adjudicating the matter in California. Even assuming, *arguendo*, that it is true that
6 board certification holds such a central place in the livelihood of a physician in
7 California, such a fact does not arise from *defendant ABOS' conduct*, as required.
8 Walden, 571 U.S. at 284. Additionally, the same could arguably be said about other
9 States with greater connection to the facts in this matter, and thus, California (as a
10 forum) gains no ground with such an argument.

11 It would be patently unreasonable to force ABOS to defend itself in California,
12 and thus even if the first two prongs are met, the third prong weighs heavily *against*
13 jurisdiction in California. To put it as case law does, the exercise of jurisdiction in
14 California would offend traditional notions of fair play and substantial justice. *See*,
15 *e.g.*, Burger King Corp., 471 U.S. at 477-78.

16 **III. VENUE IS IMPROPER IN CALIFORNIA, AND EITHER DISMISSAL**
17 **OR TRANSFER IS MANDATORY.**

18 “A civil action may be brought in – (1) a judicial district in which any defendant
19 resides, if all defendants are residents of the State in which the district is located; (2)
20 a judicial district in which a substantial part of the events or omissions giving rise to
21 the claim occurred...; or (3) if there is no district in which an action may otherwise
22 be brought as provided in this section, a judicial district in which any defendant is
23 subject to the court’s personal jurisdiction with respect to such action.” 28 U.S.C. §
24 1391(b). Here, ABOS is not a resident of the State of California, so venue is improper
25 under 28 U.S.C. § 1391(b)(1). Further, none of the events or alleged omissions giving
26 rise to the claim occurred in the State of California, so venue is improper under 28
27 U.S.C. § 1391(b)(2).

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1 “The district court of a district in which is filed a case laying venue in the wrong
 2 division or district shall dismiss, or if it be in the interest of justice, transfer such case
 3 to any district or division in which it could have been brought.” 28 U.S.C. § 1406(a);
 4 *see also* Fed. R. Civ. P. 12(b)(3). Since venue is improper in the State of California,
 5 dismissal or transfer is *mandatory*. *See* 28 U.S.C. § 1406(a); *see also* Johnson v.
 6 Payless Drug Stores Northwest, Inc., 950 F. 2d 586, 587-88 (9th Cir. 1991).

7 **A. The Court Should Dismiss Due To Improper Venue.**

8 If the Court declines to dismiss for lack of personal jurisdiction (discussed
 9 above), defendant ABOS contends that it should dismiss due to improper venue
 10 pursuant to 28 U.S.C. § 1406(a) and Fed. R. Civ. P. 12(b)(3).

11 **B. Alternatively, The Court Should Transfer To Proper Venue.**

12 If the Court finds that it serves the interests of justice, it should transfer this
 13 matter to the Northern District of Illinois (Eastern Division – Chicago, Illinois). As
 14 plaintiff’s Complaint alleges and as established by the Declaration of David F. Martin,
 15 M.D., the events relevant to this matter occurred in Chicago, Illinois. *See* plaintiff’s
 16 Complaint, Document 1, Exhibit “A” thereto, ¶ 18; *see also* Martin Decl., ¶ 5. Indeed,
 17 ABOS regularly holds oral examinations of the type that plaintiff complains in
 18 Chicago, Illinois, and thus the State of Illinois has an interest in adjudicating the
 19 instant dispute.

20 **IV. CONCLUSION**

21 As discussed in detail above, there is no proper basis for jurisdiction to be
 22 maintained over defendant ABOS in the State of California. Furthermore, even if
 23 there were a proper basis for jurisdiction, venue is nevertheless improper in the State
 24 of California. Under either analysis, dismissal is proper. *See* Fed. R. Civ. P. 12(b)(2)
 25 *and* (3). However, if the Court declines to dismiss on personal jurisdiction grounds
 26 and finds that the interests of justice are served by transfer, this matter should be
 27 transferred to the Northern District of Illinois (Eastern Division – Chicago, Illinois),
 28 the district in which the events relevant to the instant dispute occurred.

1 Based on the foregoing, defendant ABOS respectfully requests that the Court
2 dismiss this action in its entirety, or in the alternative, that it transfer this matter to the
3 Northern District of Illinois (Eastern Division – Chicago, Illinois).

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5 DATED: April 29, 2024

TRESSLER LLP

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9 Corey E. Krueger
10 Attorneys for Defendant,
11 AMERICAN BOARD OF
12 ORTHOPAEDIC SURGERY
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DECLARATION OF DAVID F. MARTIN, M.D.

I, David F. Martin, M.D., declare and state as follows:

1. I am the Executive Director of the AMERICAN BOARD OF ORTHOPAEDIC SURGERY (“ABOS”). I have personal, first-hand knowledge of the facts and circumstances set forth in this declaration, and if called upon to testify to those facts, I could and would do so competently.

2. I have worked as the Executive Director of ABOS for approximately eight (8) years. As the Executive Director, my job duties include promoting activities that support the policy, purpose, and mission of ABOS; communication with candidates; communication with the American Board of Medical Specialties and its other member boards; and communication with the general public. As the Executive Director, I have access to personnel files and payroll records via which I can ascertain where ABOS employees work and where ABOS business activities are carried out. I am based out of ABOS’ headquarters located at 400 Silver Cedar Court, Chapel Hill, North Carolina 27514.

3. ABOS was incorporated in the State of Delaware on or about February 8, 1934. As noted above, its headquarters is located at 400 Silver Cedar Court, Chapel Hill, North Carolina 27514.

4. ABOS employs zero (0) employees in the State of California. There are numerous physicians who live and practice in the State of California who hold Board Certification from ABOS, but none are ABOS employees, and none are involved with ABOS business other than to hold Board Certification from ABOS. ABOS has no operations or company resources in the State of California of any kind.

5. ABOS’s primary operations and strategic decision-making capabilities originate from its corporate headquarters in Chapel Hill, North Carolina. ABOS holds most oral examination proceedings (including the one at issue in this matter) in Chicago, Illinois.

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1 6. ABOS accepts applications for board certification from candidates
2 across the United States. However, ABOS does not purposefully direct its efforts
3 toward any particular State, including California. Candidates reach out to ABOS and
4 seek board certification, not the other way around.

5 7. No aspect of ABOS operations is specifically directed toward the State
6 of California. To the extent that ABOS engages in any outreach or marketing, these
7 efforts are directed to a nationwide audience, and not to any particular State. ABOS
8 has not made any particular effort to interject itself into the State of California in
9 particular.

10 I declare under penalty of perjury under the laws of the United States of
11 America that the foregoing is true and correct.

12
13 Dated: _____

4/29/24



David F. Martin, M.D.
Executive Director
American Board of Orthopaedic Surgery

DECLARATION OF COREY E. KRUEGER

I, Corey E. Krueger, declare and state as follows:

1. I am an attorney at law duly licensed to practice law before all courts of the State of California and this Court. I am a Partner with the law firm Tressler LLP, counsel of record herein for defendant AMERICAN BOARD OF ORTHOPAEDIC SURGERY (“ABOS”). As the primary handling attorney for this matter, I have personal knowledge of the facts stated herein, and if called upon to testify to them, I could and would do so competently.

2. On April 16, 2024, I sent e-mail correspondence to plaintiff’s counsel to initiate meet and confer regarding the instant motion. A true and correct copy of that e-mail correspondence is attached hereto as Exhibit “A”.

3. On April 19, 2024, plaintiff’s counsel responded to my e-mail, stating without discussion that he would not stipulate to transfer of this matter to the correct venue. A true and correct copy of that email correspondence is attached hereto as Exhibit “B”. Accordingly, no agreement could be reached on the subject matter of the instant motion.

4. On April 23, 2024, I performed a search on the State of California Secretary of State website to ascertain whether AMERICAN BOARD OF ORTHOPAEDIC SURGERY is registered to do business in California. My search revealed no results for that entity name. Accordingly, ABOS is not registered to do business in the State of California.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: April 29, 2023



Corey E. Krueger

CERTIFICATE OF SERVICE

I hereby certify that on April 30, 2024, a copy of foregoing **DEFENDANT AMERICAN BOARD OF ORTHOPAEDIC SURGERY'S NOTICE OF MOTION AND MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION (FED. R. CIV. P. 12(b)(2)), OR IN THE ALTERNATIVE TO DISMISS FOR IMPROPER VENUE (FED. R. CIV. P. 12(b)(3)), OR IN THE ALTERNATIVE, TO TRANSFER VENUE (28 U.S.C. §§ 1391(b)(2) and 1406(a)); MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF DAVID F. MARTIN, M.D.; DECLARATION OF COREY E. KRUEGER; EXHIBITS** was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

Dated: April 30, 2024

TRESSLER LLP

By: /s/ Corey E. Krueger
Corey E. Krueger